IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1022 OF 2007
IN
SUIT NO.2005 OF 1980

ING Vyasya Bank ..Plaintiffs

V/s.

M/s.Navbharat Trading Corporation
& Ors. ..Defendants

Mr.Sharon Jagtyani a/w Mahesh Shukla i/by Desai & Diwanji for plaintiffs.

Mrs.Ratna Jaiswal i/by N.N.Parekh for defendants 2, 4, 5, 6, and 7.

CORAM : A.M.KHANWILKAR,J

DATE : AUGUST, 23, 2007.

P.C. :

1. Heard Counsel for the parties. Perused the pleadings and documents on record.

2. By this application the plaintiffs seek permission to lead secondary evidence in respect of documents referred to in the schedule by filing the typed copies of the documents. The documents are divided in two sets. First set of documents, according to the plaintiffs, the original copy thereof has been lost. The circumstances in which the same has been lost has been spelt out on affidavit. Besides it is stated that when the plaint was presented those documents were annexed as

Exhibit after getting it duly typed in the office. In so far as the 2nd set of documents is concerned, it is stated that the same are before the DRT in relation to pending proceedings. The plaintiffs therefore, seek to place on record typed copies of the said documents as secondary evidence. Besides, it is stated that the documents falling under the 1st schedule are the crucial documents on the basis of which the matter in issue will have to be decided.

3. Counsel for the defendants has vehemently opposed granting relief as claimed by the plaintiffs. According to her the plaintiffs have not satisfactorily established the fact that the documents are infact lost as alleged by the plaintiffs. According to the defendants the plaintiffs be put to strict proof thereof.

4. After considering the rival submissions, I have no hesitation to grant request of the plaintiffs in terms of prayer clause-(a). Firstly because documents falling under the 1st schedule are already annexed to the plaint. In the Written statement the correctness or authenticity or existence of those documents have not been challenged. In the same form the plaintiffs want to rely on these documents as secondary evidence. The fact that original of the said documents has been lost is within the

personal knowledge of the plaintiffs. The defendants have controverted that position without producing any further material to suggest that the stand so taken on behalf of the plaintiffs is dis-honest or false.

5. In so far as documents falling under 2nd schedule is concerned, there can be no difficulty in accepting the claim of the plaintiffs as those documents are already part of record before the DRT. That fact is not disputed by the defendants.

6. Accordingly, Chamber summons is made absolute in terms of prayer clause-(a).

(A.M.KHANWILKAR)

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1. As affidavit of evidence and documents are already filed and the said order is passed today in Chamber summons No.1022/2007, the matter will have to proceed further for recording of evidence. The defendants intend to cross-examine the plaintiffs' witness. That can proceed before the Court Commissioner. It is agreed between the parties that Mr.Farhan Dubhash be appointed as a Court Commissioner who in turn will proceed with recording of evidence on commission. The parties assure to appear before the Court Commissioner on 6th September 2007 at 5.15 p.m. on which date, the

Court Commissioner can proceed with the recording of evidence or defer the same to some other convenient date, while ensuring that report will have to be submitted before this Court on or before 31st October 2007. The parties agree to equally share the amount towards fees and expenses of the Commissioner and to pay the same directly to the Commissioner.

2. It is made clear that if the Court Commissioner forms an opinion that parties are not co-operating for early conclusion of the commission work, he may submit interim report to this Court which shall be placed for passing necessary orders thereon on the following Court working day by the Registry.

(A.M.KHANWILKAR,J)